

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

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| ----- | X |
| BUFFALO LABORERS WELFARE FUND; | : |
| BUFFALO LABORERS PENSION FUND; BUFFALO | : Docket No.: 1:18-cv-00544 |
| LABORERS TRAINING FUND; BUFFALO | : |
| LABORERS SECURITY FUND; THOMAS L. | : |
| PANEK, in his fiduciary capacity as | : DECLARATION OF |
| ADMINISTRATOR; LABORERS EMPLOYERS | : BRUCE L. LISTHAUS |
| COOPERATION AND EDUCATION TRUST; AND | : IN SUPPORT OF |
| LABORERS' LOCAL 210, INTERNATIONAL | : PLAINTIFFS' MOTION FOR |
| UNION OF NORTH AMERICA, | : SUMMARY JUDGMENT |
| | : |
| Plaintiffs, | : |
| | : |
| - against - | : |
| | : |
| LEONE CONSTRUCTION, INC., | : |
| | : |
| Defendant. | : |
| ----- | X |

Bruce L. Listhaus, an attorney duly admitted to practice before this Court, declares the following to be true under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am a partner with the law firm of Gorlick, Kravitz & Listhaus, P.C. ("Firm"), attorneys for Plaintiffs Buffalo Laborers Welfare Fund; Buffalo Laborers Pension Fund; Buffalo Laborers Training Fund; Buffalo Laborers Security Fund ("Funds"); Thomas L. Panek, in his capacity as Administrator; Laborers Employers Cooperation and Education Trust ("LECET"); and Laborers' Local 210, International Union of North America ("Union") (the Funds, LECET and the Union are hereinafter collectively "plaintiffs"). I am personally familiar with the facts asserted herein.

2. I submit this Declaration in support of Plaintiffs' Motion for Summary Judgment on Damages, and specifically, that part of the motion seeking reasonable attorneys' and paralegal fees and costs.

3. As a partner at the Firm, I review attorney bills for legal fees and costs, including those incurred in this Action. Annexed hereto as Exhibit “1” is a true and correct copy of the Firm’s detailed contemporaneous billing records for attorney and paralegal time, including the dates, hours expended, and the nature of work performed in connection with this Action. Work for which Plaintiffs are not seeking an award of fees have been removed from the billing records. Descriptions of work performed protected by the attorney-client privilege and/or work-product protection have been redacted.

4. Plaintiffs expended: (a) \$60,516.00 in fees for attorney time and \$2,334.00 in fees for paralegal time; and (b) \$661.53 in costs comprised of: (i) \$400 filing fee, (ii) \$130.58 service of process on the Secretary of State, and (iii) \$130.95 expedited transcript of 5/10/2019 hearing. Annexed hereto as Exhibit “2” are true and correct copies of the invoices for the costs.

5. The undersigned refers to the Declaration of Joy K. Mele, the lead associate in this Action, for an explanation of the work performed in this Action.

6. The attorney and paralegal fees incurred were for services provided by the following attorneys and paralegals. The hours are broken down by individual and listed in the order in which they are found in the attached Firm billing records.

| Name | Title | Billing Rate | Hours | Fee Total |
|-------------------|------------------|--------------------------------|--------------|------------------|
| Bruce L. Listhaus | Partner | \$215.00/\$275.00 ¹ | 17.2 | \$3,998.00 |
| Joy K. Mele | Senior Associate | \$185.00/\$225.00 ¹ | 198.8 | \$40,174.00 |
| Ryan Lavigne | Jr. Associate | \$90.00/\$135.00 ² | 61.7 | \$8,068.50 |
| Jennifer Catera | Jr. Associate | \$135.00 | 61.3 | \$8,275.50 |
| Jesse Paine | Paralegal | \$60.00 | 4.1 | \$246.00 |

¹ Effective September 1, 2019.

² Effective June 1, 2018.

| | | | | |
|-----------------------|-----------|------------------------------|--------------|--------------------|
| Jennifer Mejia | Paralegal | \$60.00/\$75.00 ¹ | 2.7 | \$190.50 |
| Charles Simpson-Brown | Paralegal | \$75.00 | 3.0 | \$225.00 |
| Giselle Villarreal | Paralegal | \$75.00 | 22.3 | \$1,672.50 |
| TOTAL | | | 371.1 | \$62,850.00 |

7. The following is a description of the background and experience of each of the attorneys and paralegals:

8. I have been continuously engaged in the practice of law since 1988, and have over twenty-five (25) years of experience representing clients in ERISA and labor-related matters. I am admitted to practice in the New York State Courts, New Jersey State Courts, the United States District Courts for the Southern, Eastern and Western Districts of New York, and the United States District Court for the District of New Jersey.

9. I expended 12.2 hours of work on this case at an hourly rate of \$215.00, equivalent to a fee of \$2,623.00. Ex. 1, pp. 1-2. My rate increased to \$275.00 effective September 1, 2019. I expended 5 hours of work on this case at the hourly rate of \$275.00, equivalent to a fee of \$1,375.00. Ex. 1, pp. 2-3. In total, I expended 17.2 hours of work on this case, equivalent to a total fee of \$3,998.00. Ex. 1. p.3. Upon information and belief, this fee is reasonable and comparable to other attorneys in the community with similar experience.

10. Joy K. Mele is a senior associate with the Firm, has been continuously engaged in the practice of law since 2001, and has over twelve (12) years of experience representing clients in ERISA and labor-related cases. Ms. Mele is admitted to practice in the New York State Courts, the New Jersey State Courts, the United States District Courts for the Southern, Eastern, Northern and Western Districts of New York, the United States Bankruptcy Courts of the

Southern, Eastern, and Western Districts of New York, the United States District Court of New Jersey, the District Court for the Eastern District of Michigan, the Western District of North Carolina, the Western District of Pennsylvania, the District Court of Arizona, the District Court for the District of Columbia, the United States Courts of Appeals for the Second, Ninth, and Sixth Circuits, and the Supreme Court of the United States.

11. Ms. Mele expended 113.9 hours working on this case at an hourly rate of \$185.00, equivalent to a fee of \$21,071.50. Ex. 1, pp. 3-12. Ms. Mele's hourly rate increased to \$225.00, effective September 1, 2019. Ms. Mele expended 84.9 hours working on this case at the hourly rate of \$225.00, equivalent to a fee of \$19,102.50. Ex. 1, pp. 12-17. In total, Ms. Mele expended 198.8 hours of work on this case, equivalent to a total fee of \$40,174.00. Ex. 1, p. 17. Upon information and belief, this fee is reasonable and comparable to other attorneys in the community with similar experience.

12. Ryan Lavigne was a junior associate with this Firm from April 23, 2018 to November 21, 2018, representing clients in ERISA and labor-related cases. During the time Mr. Lavigne was employed with the Firm, he was admitted to practice in the New York State Courts.

13. Mr. Lavigne expended 5.8 hours working on this case at an hourly rate of \$90.00, equivalent to a fee of \$522.00. Ex. 1, p. 17. Mr. Lavigne's hourly rate increased to \$135.00, effective June 1, 2018. Mr. Lavigne expended 55.9 hours working on this case at the hourly rate of \$135.00, equivalent to a fee of \$7,546.50. Ex. 1, pp. 17-19. In total, Mr. Lavigne expended 61.7 hours of work on this case, equivalent to a total fee of \$8,068.50. Ex. 1, p. 19. Upon information and belief, this fee is reasonable and comparable to other attorneys in the community with similar experience.

14. Jennifer Catera has been a junior associate with the Firm since August 12, 2019, and has been continuously engaged in the practice of law since 2016. Ms. Catera is admitted to practice in the New York State Courts, and the United States District Courts for the Southern, Eastern, and Western Districts of New York.

15. Ms. Catera expended 61.3 hours working on this case at an hourly rate of \$135.00, equivalent to a fee of \$8,275.50. Ex. 1, pp. 19-21. Upon information and belief, this fee is reasonable and comparable to other attorneys in the community with similar experience.

16. Jesse Paine was a paralegal with this Firm from April 6, 2015 to October 26, 2018, serving clients in ERISA and labor-related matters.

17. Mr. Paine expended 4.1 hours of work on this case at an hourly rate of \$60.00, equivalent to a fee of \$246.00. Ex. 1, p. 21. Upon information and belief, this fee is reasonable and comparable to other paralegal and litigation support staff in the community with similar experience.

18. Jennifer Mejia was a paralegal with this Firm from October 26, 2018 to September 20, 2019, serving clients in ERISA and labor related matters.

19. Ms. Mejia expended .8 hours working on this case at an hourly rate of \$60.00, equivalent to a fee of \$48.00. Ex. 1, pp. 21-22. Ms. Mejia's hourly rate increased to \$75.00, effective September 1, 2019. Ms. Mejia expended 1.9 hours working on this case at the hourly rate of \$75.00, equivalent to a fee of \$142.50. Ex. 1, p. 22. In total, Ms. Mejia expended 2.7 hours of work on this case, equivalent to a total fee of \$190.50. Ex. 1, p. 22. Upon information and belief, this fee is reasonable and comparable to other paralegals and litigation support staff in the community with similar experience.

20. Charles Simpson-Brown has been a paralegal with the Firm since May 6, 2019 serving clients in ERISA and labor-related matters.

21. Mr. Simpson-Brown expended 3.0 hours of work on this case at an hourly rate of \$75.00, equivalent to a fee of \$225.00. Ex. 1, p. 22. Upon information and belief, this fee is reasonable and comparable to other paralegal and litigation support staff in the community with similar experience.

22. Giselle Villarreal was a paralegal with this Firm from October 24, 2019 to June 5, 2020 serving clients in ERISA and labor-related matters.

23. Ms. Villarreal expended 22.3 hours of work on this case at an hourly rate of \$75.00, equivalent to a fee of \$1,672.50. Ex. 1, pp. 22-23. Upon information and belief, this fee is reasonable and comparable to other paralegal and litigation support staff in the community with similar experience.

24. As discussed in detail in the Declaration of Joy K. Mele, the requested fees are reasonable in light of the work involved in this Action, including, but not limited to, opposing Defendant's Motion to Dismiss, moving for partial summary judgment on liability, and opposing Defendant's Motion for Partial Summary Judgment on Liability.

25. Accordingly, Plaintiffs seek an award of fees and costs in the total amount of \$63,511.53, comprised of \$62,850.00 in attorneys' and paralegal fees and \$661.53 in costs.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th day of July, 2020.

/s/ Bruce L. Listhaus
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